

**Minutes
Bar Harbor Planning Board
March 19, 2008**

Members present: Kay Stevens-Rosa, Chair; Mike Gurtler; Kevin Cochary; Lynne Williams; Dave Bowden

Also present: Anne Krieg, Town Planner; Kris Hultgren, Staff Planner

I. CALL TO ORDER — 5:31 p.m.

II. EXCUSED ABSENCES

Mr. Bowden nominated Mr. Gurtler for Vice Chair. Mr. Cochary seconded and the Board voted unanimously on the motion. Mr. Bowden nominated Mr. Cochary for Secretary. Ms. Williams seconded and the Board voted unanimously on the motion.

III. ADOPTION OF THE AGENDA

Mr. Gurtler made a motion to approve the agenda, Mr. Bowden seconded and the Board voted unanimously on the motion.

IV. APPROVAL OF MINUTES

Mr. Gurtler made a motion to approve the minutes from the March 5 meeting. Mr. Cochary seconded and the Board voted unanimously on the motion.

V. REGULAR BUSINESS

A. Continuation of a Public Hearing – SD-07-05 – Sand Point Road Subdivision

Project Location: 192 Sand Point Road, Bar Harbor Tax Map 204, Lot 62 and a portion of Tax Map 208, Lot 45

Applicant: Brian D. Shaw

Application: Proposes a 7 lot residential subdivision

Mr. Bowden recused himself from this agenda item.

Mr. Musson gave an update of the project. He emphasized the items at issue being nitrate loading of groundwater; stormwater mitigation and groundwater draw down issues.

Mr. Johnston went through CES's response to the Ransom Environmental peer review. Mr. Johnston described the updated stormwater plans. Mr. Johnston indicated the applicant's intent to add a pretreatment component to the effluent discharge.

Mr. Gurtler asked about the opinion of the engineer used by the neighbors to assess the impacts of the development. He asked for guidance from the town attorney as to

the legal issues brought forth in a document submitted by attorney Goodall referring to the Planning Board not being able to approve the project as submitted. Ms. Meader will formally respond to the letter and submit the response for the record.

The Board continued to discuss the different submissions from the applicant and the peer review consultant and talked about how to use the information.

Mr. Ross, representing the applicant, asked the Board to consider the applicants due process rights. Mr. Musson concurred and encouraged the Board to move the process forward.

Mr. Coffin from the peer review firm Ransom Environmental reviewed his comments to the CES peer review response. He commented specifically about the slanted road and he also mentioned the waiver request by CES for the conservation district approval of the soil and sedimentation plan and concurred with CES that the soil and sedimentation plan have received adequate review. Mr. Coffin also endorsed the applicants plan to pretreatment of nitrates before they enter the groundwater and encouraged future developments with similar soil constraints look at pretreatment for wastewater.

Mr. Cochary asked Mr. Coffin to formally respond to the neighbors' engineer's letter calling into question the validity of the application.

Ms. Williams asked about maintaining the road. Mr. Ross responded that a home owners association will be created and the onus will be on the lot owners to maintain stormwater and road through covenants.

Mr. Ross suggested restrictive covenants be part of a conditional decision by the Planning Board.

Mr. Gurtler made a motion to grant the waiver of getting Conservation District approval for the erosion and sedimentation part of the plan. Mr. Cochary seconded and the Board voted unanimously on the motion.

John Kannegieser, an abutter to the project, apologized for his attorney's aggressive style at the February 6 meeting. Mr. Kannegieser explained the problems he sees with the proposed development. He also agreed to obtain a resume from the engineer he used to review the project to verify his credentials. Mr. Kannegieser specifically addressed the septic system part of project and referred to the section of the Land Use Ordinance that says a subdivision should not be approved on soils rated poor or very poor. He went on to discuss potential problems with water quantity and the amount of ledge and thin soils on the site.

Jim Boyer, an abutter to the project, specifically addressed lots 1 and 2 of the development. He expressed skepticism that any engineering techniques could adequately address the stormwater runoff created by the development.

Mary Opdyke, a resident of the neighborhood, referred to the suitability of the soils and the location of septic systems in relation to the road. She was also specifically concerned with the potential nitrate runoff that could affect her well.

Phoebe Boyer, referred to a 1978 subdivision map and talked about her experience with subdivision approval through the town. She expressed her discomfort with the amount of engineering necessary to make lots 1 and 2 appropriate for development. She does not believe there is enough soil on lots 1 and 2 for development.

Mr. Johnston addressed the thin soils and the character of the neighborhood. He commented that other residents of the neighborhood have septic systems on the same soils as being proposed in the development.

Mr. Cochary asked about the seasonal water supply.

Ms. Krieg asked the applicant to show the hook up to the seasonal water supply on their site plan.

Mr. Opdyke addressed the existing housing in the neighborhood and the septic systems by saying that much knowledge has been gained since they were installed.

Mr. Gurtler made a motion to move the public hearing to the April 16 meeting. Mr. Cochary seconded and the Board voted unanimously on the motion.

Before the next meeting on this application the Board requested responses to Mr. Goodall's letter from the town attorney and Mr. Coffin.

B. Continuation of a Public Hearing – SP-07-02 – Ellsworth Building Supply

Project Location: 1513 State Highway 102, Bar Harbor Tax Map 219 Lot 30

Applicant: Ellsworth Building Supply

Application: Proposes to construct a new storage facility and make other improvements including changes to outdoor storage areas and vehicular circulation

Mr. Johnston gave an overview of the project. He indicated that the applicant is moving the new structure to meet the 75 foot setback.

The applicant submitted a new plan and reviewed the new plan with the Board.

Mr. Cochary asked about the internal circulation of the building layout.

Mr. Cochary asked about the buffer thickness abutting the residential district. Mr. Cochary asked the applicant to let the vegetation grow up without disturbing it.

Oli Wenker, an abutter to the project, expressed concern about the stormwater runoff onto his property. Mr. Johnston described the applicant's plans to address the stormwater issue and noted that the state has asked the applicant for some stormwater improvements around the area where the new parking lot will be as part of the DEP Stormwater Permit.

Kelly Wenker asked what options are available to abutting land owners if the proposed engineered stormwater system fails. Ms. Meader suggested making a condition of approval testing the system to make sure it performs as it is supposed to. Mr. Johnston mentioned that the DEP requires follow up after a permit is issued to ensure compliance.

Ms. Krieg asked about phasing the project and the applicant indicated that it still intends to phase the project. The applicant agreed to submit a phasing plan for the record.

Mr. Cochary made a motion to continue the public hearing to the April 2 meeting. Mr. Bowden seconded and the Board voted unanimously on the motion.

C. Public Hearing: Land Use Ordinance Amendment – Wireless Communications Facilities – Amend the Bar Harbor Code, Chapter 125, Land Use Ordinance, to add regulations for the siting of wireless communication facilities.

Ms. Krieg gave an overview of the proposed wireless ordinance.

Mr. Hultgren gave a brief overview of the process used to develop the ordinance.

Ms. Williams expressed her discomfort with the ordinance and specifically mentioned the nonconforming setback, the Planning Board exemption in the ordinance related to facilities on existing structures and potential health risks of electromagnetic radiation.

Robert Phipps, a resident of Bar Harbor referred to the Warren, Connecticut ordinance regulating the siting of wireless facilities and specifically the provision in the ordinance referring to the setback from schools. He also expressed his discomfort for the exemption in the ordinance that does not require a facility going on an existing building needing Planning Board approval. He does not approve of the facility planned for the fire station.

Barbara Meyers, a resident of Cranberry Island, expressed her thoughts on the wireless ordinance. She referred to case law that speaks about municipal power to regulate the siting of cell towers and asked if there is any way to change the language of the ordinance before the vote at Town Meeting.

Ruth Eveland spoke about a procedural window to adjust the language in the ordinance and described the time constraints as effectively making it impossible to make changes before Town Meeting.

Ms. Stevens-Rosa asked Ms. Meader what would happen if we did not have an ordinance in place. Ms. Meader expressed her discomfort with that scenario and said no ordinance puts the town in a vulnerable position.

The Board talked about the process of making changes to the ordinance for the Fall Town Meeting.

Mr. Gurtler expressed his feeling that the ordinance has been adequately reviewed by town departments.

Ms. Krieg reviewed the process of removing the language from the ordinance that required wireless facilities proposed for existing buildings get Planning Board approval.

Ms. Meyers addressed the health concerns of wireless communication towers. She talked about the impact on property values and suggested that the monitoring provision be updated to require it be done at peak usage times.

Judith Blank spoke about her concerns with EMR emissions and suggested forming a community group to study the issue in depth.

Mr. Cochary expressed his thoughts by saying this ordinance is better than doing nothing at this time.

Mr. Bowden referred to the mentions of Acadia Park in the ordinance. He was uncomfortable with a scenario that would have Acadia putting up a tower on land that abuts Bar Harbor without the town having any say in the matter.

John Kelly, the Acadia Park Planner, noted that the Park has no ability to control land beyond its boundaries.

Mr. Cochary reiterated the importance of the park to the citizens of Bar Harbor.

Mr. Gurtler made a motion to recommend adoption of the amendment to the Land Use Ordinance regarding wireless communications ordinance. Mr. Cochary second and the motion passed by a 4-1 vote with Ms. Williams voting against.

Mr. Gurtler made a motion to set a goal of having amendments ready to go for town meeting in November to update the wireless communications ordinance. Ms. Williams seconded. The Board discussed the motion. A public workshop was suggested to gain public input. The motion passed by a unanimous vote.

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- D. Public Hearing: Land Use Ordinance Amendment – Groundwater Protection Standards** – Amend the Bar Harbor Code, Chapter 125, Land Use Ordinance, to update the groundwater protection standards.

The board discussed the groundwater LUO update.

Mr. Cochary made a motion to recommend adoption of the amendment to the Land Use Ordinance regarding groundwater protection.. Mr. Gurtler seconded and the Board voted unanimously on the motion.

- E. Public Hearing: Land Use Ordinance Amendment – Planning Board Changes** – Amend the Bar Harbor Code, Chapter 125, Land Use Ordinance, to add a process for Planning Board review of non-conforming situations.

Ms. Krieg gave an overview of the LUO planning board changes.

Mr. Cochary moved to recommend the adoption of the amendment to the Land Use Ordinance regarding changes to the Planning Board procedure with respect to nonconforming situations. Mr. Gurtler seconded and the Board vote unanimously on the motion.

- F. Public Hearing: Land Use Ordinance Amendment – Appeals Board Procedure –**
Amend the Bar Harbor Code, Chapter 125, Land Use Ordinance, to update the administration and review of variances, administrative appeals and reconsideration requests.

Ms. Krieg gave an overview of the changes to the Appeals Board process.

Mr. Cochary made a motion to recommend adoption of the changes to the Appeals Board process. Mr. Gurtler seconded and the Board voted unanimously on the motion.

VI. OTHER BUSINESS

- A. Shared Parking Agreement: Michelle's Brown Bag Café and The Ivy Manor Inn**

Mr. Gurtler made a motion to approve the application for shared parking with the condition that the applicant submits liability insurance information. Mr. Cochary seconded and the Board voted unanimously on the motion.

VII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

VIII. ADJOURNMENT - 9:29 PM

Mr. Cochary made a motion to adjourn. Ms. Williams seconded and the Board voted unanimously on the motion.

Signed as approved:

Kevin Cochary, Secretary
Planning Board, Town of Bar Harbor

Date